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2 THE HONORABLE THOMAS S. ZILLY

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

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AT SEATTLE

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MOD SUPER FAST PIZZA, LLC, a Delaware
corporation,

Plaintiff,

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v.

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CARL CHANG; CMCB VENTURES, LLC, a
Washington corporation; and PIEOLOGY
SPECTRUM, LLC, a Delaware corporation,

13

Defendants.

14

AND RELATED COUNTERCLAIM

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Defendant Carl Chang (“Chang”), for himself and for no other defendant, hereby submits his Answer to plaintiff MOD Super Fast Pizza, LLC’s (“MOD”) Second Amended Complaint (the “Complaint”). Unless indicated differently, each paragraph below corresponds with the paragraph of the Complaint bearing the same number. To the extent that the unnumbered paragraphs, captions, and/or headings in the Complaint are treated as allegations, such paragraphs, captions, and headings are hereby denied.

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CHANG'S ANSWER TO SECOND AMENDED
COMPLAINT - 1
CASE NO.: 12-CV-01359-TSZ

JEFFER MANGELS BUTLER & MITCHELL LLP

1900 Avenue of the Stars, 7th Floor

Los Angeles, California 90067

Telephone: (310) 203-8080 Facsimile: (310) 203-0567

1 1. Chang admits that MOD purports to bring claims for trade dress infringement,
 2 misappropriation of trade secrets, and tortious interference with contractual relations, breach of
 3 contract, civil conspiracy, and permanent injunctive relief, but denies that MOD's claims have any
 4 merit.

5 2. Chang admits that he is a manager of a company that owns and operates pizza
 6 restaurants in Southern California under the name "Pieology Pizzeria." Chang admits that Pieology
 7 Pizzeria is not connected to, affiliated with, or authorized by MOD. Except as expressly admitted
 8 and alleged herein, Chang denies each and every allegation contained in the corresponding
 9 paragraph of the Complaint.

10 I. PARTIES

11 1. Chang lacks sufficient knowledge or information regarding the allegations contained
 12 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such
 13 allegations.

14 2. Chang admits that he is a resident of Southern California. Except as expressly
 15 admitted and alleged herein, Chang denies the allegations contained in the corresponding paragraph
 16 of the Complaint.

17 3. Chang admits that CMCB is a limited liability company organized under the laws of
 18 the State of Washington, with its principal place of business in Rancho Santa Margarita, California.
 19 Except as expressly admitted and alleged herein, Chang denies the allegations contained in the
 20 corresponding paragraph of the Complaint.

21 4. Chang admits that Pieology Spectrum, LLC is a limited liability company organized
 22 under the laws of the State of Delaware, with its principal place of business in Rancho Santa
 23 Margarita, California. Except as expressly admitted and alleged herein, Chang denies the
 24 allegations contained in the corresponding paragraph of the Complaint.

25 5. Chang admits that The Little Brown Box, LLC ("LBBP") is a limited liability
 26 company organized under the laws of the State of Delaware, with its principal place of business in
 27 Rancho Santa Margarita, California. Chang admits that Pieology Spectrum, LLC is wholly-owned

1 by LBBP. Except as expressly admitted and alleged herein, Chang denies the allegations contained
 2 in the corresponding paragraph of the Complaint.

3 6. Chang admits that Pieology Franchise, LLC is a limited liability company organized
 4 under the laws of the State of Delaware, with its principal place of business in Rancho Santa
 5 Margarita, California. Chang admits that Pieology Franchise, LLC is wholly-owned by LBBP,
 6 which is its sole member. Except as expressly admitted and alleged herein, Chang denies the
 7 allegations contained in the corresponding paragraph of the Complaint.

8 **II. JURISDICTION AND VENUE**

9 1. The allegations contained in the corresponding paragraph of the Complaint are legal
 10 conclusions and require no response from Chang. To the extent a response is required, Chang
 11 admits that this Court has subject matter jurisdiction over the claims alleged in the Complaint.

12 2. The allegations contained in the corresponding paragraph of the Complaint are legal
 13 conclusions and require no response from Chang. To the extent a response is required; Chang
 14 denies that venue is proper in this judicial district.

15 3. The allegations contained in the corresponding paragraph of the Complaint are legal
 16 conclusions and require no response from Chang. To the extent a response is required, Chang
 17 denies the allegations contained in the corresponding paragraph of the Complaint.

18 **III. FACTS**

19 **CREATION AND DEVELOPMENT OF MOD'S 20 TRADE DRESS AND TRADE SECRETS.**

21 1. Chang admits that, in or around May 2008, CMCB made an investment in MOD, and
 22 acquired 150 "Class A Units" in MOD. In or around May 2010, CMCB returned those "Class A
 23 Units" to MOD, and MOD returned to CMCB the money it had invested. Chang denies that he
 24 invested in MOD in his individual capacity. Except as expressly admitted and alleged herein,
 25 Chang lacks sufficient knowledge or information regarding the allegations contained in the
 26 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such
 27 allegations.

1 2. Chang lacks sufficient knowledge or information regarding the allegations contained
2 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such
3 allegations.

4 3. Chang lacks sufficient knowledge or information regarding the allegations contained
5 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such
6 allegations.

7 4. Chang lacks sufficient knowledge or information regarding the allegations contained
8 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such
9 allegations.

10 5. Chang denies that MOD restaurants feature a distinctive, non-functional combination
11 of design, look, feel, menu, and style of service. Chang lacks sufficient knowledge or information
12 regarding the remaining allegations contained in the corresponding paragraph of the Complaint to
13 admit or deny, and, on that basis, denies all such allegations.

14 6. Chang denies that MOD owns any protectable trade dress. Chang denies that MOD
15 uses a distinctive, non-functional combination of features. Chang lacks sufficient knowledge or
16 information regarding the remaining allegations contained in the corresponding paragraph of the
17 Complaint to admit or deny, and, on that basis, denies all such allegations.

18 7. Chang admits that the articles quoted in the corresponding paragraph of the
19 Complaint in all respects speak for themselves. Chang denies that MOD owns any protectable trade
20 dress. Chang denies that the “recognition and popularity of the MOD trade dress is evident” from
21 the articles quoted in the corresponding paragraph of the Complaint. Chang lacks sufficient
22 knowledge or information regarding the remaining allegations contained in the corresponding
23 paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

24 8. Chang denies each and every allegation contained in the corresponding paragraph of
25 the Complaint.

9. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

DEFENDANTS' BACKGROUND WITH MOD

10. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

11. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

12. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

13. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

14. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

15. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

16. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

CHANG'S ANSWER TO SECOND AMENDED
COMPLAINT - 5
CASE NO.: 12-CV-01359-TSZ

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17. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

18. Chang admits that LBBP and James Markham entered an agreement on or about March 1, 2010, and that that agreement in all respects speaks for itself. Except as expressly admitted and alleged herein, Chang denies the remaining allegations of the corresponding paragraph of the Complaint.

19. Chang admits that LBBP and James Markham entered an agreement on or about June 21, 2010, and that that agreement in all respects speaks for itself. Chang admits that LBBP complied with its obligations under the agreement, and that it claims ownership of the assets purchased therein. Except as expressly admitted and alleged herein, Chang denies the remaining allegations of the corresponding paragraph of the Complaint.

20. Chang admits that, in or around May 2008, CMCB made an investment in MOD, and acquired 150 “Class A Units” in MOD. In or around May 2010, CMCB returned those “Class A Units” to MOD, and MOD returned to CMCB the money it had invested. Chang denies that he invested in MOD in his individual capacity. Except as expressly admitted and alleged herein, Chang denies the allegations contained in the corresponding paragraph of the Complaint

21. Chang admits that, in connection with its investment in MOD, CMCB executed MOD's limited liability company agreement. Chang admits that that agreement, in all respects, speaks for itself. Chang admits that, on occasion and in his capacity as a representative of CMCB, he received updates regarding MOD. Except as expressly admitted and alleged herein, Chang denies the allegations contained in the corresponding paragraph of the Complaint.

DEFENDANTS' UNLAWFUL ACTIVITIES

22. Chang admits that Pieology Spectrum, LLC was formed in March 2010. Chang lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

1 23. Chang admits that LBBP and James Markham entered into an agreement on or about
 2 June 21, 2010, and that that agreement in all respects speaks for itself. Chang admits that LBBP
 3 complied with its obligations under the agreement, and that it claims ownership of the assets
 4 purchased therein. Chang lacks knowledge or information sufficient to admit or deny the remaining
 5 allegations of the corresponding paragraph of the Complaint, and, on that basis, denies all such
 6 allegations.

7 24. Chang admits that Pieology Pizzeria in Fullerton, California opened in 2011. Chang
 8 denies utilizing, relying on, sharing, taking advantage of, exploiting, or communicating to third
 9 parties any confidential information or trade secrets belonging to MOD. Chang lacks sufficient
 10 knowledge or information regarding the allegations contained in the corresponding paragraph of the
 11 Complaint to admit or deny, and, on that basis, denies all such allegations.

12 25. Chang admits that James Markham is not a member of Pieology Spectrum, LLC, and
 13 that he has no ownership interest or professional role with Pieology Pizzeria. Chang admits that he
 14 has an indirect ownership interest in Pieology Spectrum, LLC, and Pieology Pizzeria, and that he is
 15 involved in the operation of the same. Chang denies that any defendant is engaging in the
 16 “unauthorized exploitation of MOD’s intellectual property, including its trade dress, trade secrets,
 17 [or] confidential information.” Chang lacks sufficient knowledge or information regarding the
 18 allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on
 19 that basis, denies all such allegations.

20 26. Chang admits that the Pieology website states that, *inter alia*, “Pieology prides itself
 21 on providing the best tasting, healthiest kustom pizza in the world. Using only the freshest
 22 ingredients, Pieology provides smoking hot pizzas in under 5 minutes.” Chang further admits that
 23 the Pieology website in all respects speaks for itself.

24 27. Chang denies that Pieology’s design, look, feel, menu, and/or style of service are
 25 confusingly similar to MOD’s restaurants.

26 a. Chang admits that Pieology offers individualized pizzas, made to order,
 27 cooked at a temperature sufficient to cook a pizza in approximately five minutes, in ovens visible to

1 the customer, and served within approximately five minutes. Chang lacks sufficient knowledge or
 2 information about MOD's restaurants to admit or deny the allegations regarding MOD's restaurants,
 3 and, on that basis, denies those allegations. Except as expressly admitted and alleged herein, Chang
 4 denies the allegations contained in the corresponding paragraph of the Complaint.

5 b. Chang admits that Pieology offers plain cheese pizza at one price, and that it
 6 offers pizzas with unlimited toppings at a second price. Chang lacks sufficient knowledge or
 7 information about MOD's restaurants to admit or deny the allegations regarding MOD's restaurants,
 8 and, on that basis, denies those allegations.

9 c. Chang admits Pieology offers seven pizzas with pre-determined toppings,
 10 that it identifies these pizzas by number, and that six of these pizzas are the same price as a as pizza
 11 with unlimited toppings. Chang admits that the Pieology's #3 pizza has bbq sauce, chicken,
 12 mozzarella, gorgonzola, red onion, and cilantro. Chang lacks sufficient knowledge or information
 13 about MOD's restaurants to admit or deny the allegations regarding MOD's restaurants, and, on that
 14 basis, denies those allegations. Except as expressly admitted and alleged herein, Chang denies the
 15 allegations contained in the corresponding paragraph of the Complaint.

16 d. Chang admits that Pieology offers "strips" made from pizza dough and
 17 topped with either herb butter or a cinnamon sugar sauce. Chang lacks sufficient knowledge or
 18 information about MOD's restaurants to admit or deny the allegations regarding MOD's restaurants,
 19 and, on that basis, denies those allegations. Except as expressly admitted and alleged herein, Chang
 20 denies the allegations contained in the corresponding paragraph of the Complaint.

21 e. Chang admits that Pieology offers salads. Chang lacks sufficient knowledge
 22 or information about MOD's restaurants to admit or deny the allegations regarding MOD's
 23 restaurants, and, on that basis, denies those allegations.

24 f. Chang denies each and every allegation contained in the corresponding
 25 paragraph of the Complaint.

26 g. Chang denies each and every allegation contained in the corresponding
 27 paragraph of the Complaint.

h. Chang admits that, at one time, Pieology sold individually wrapped Hostess “Ding Dongs” for \$1.00. Chang admits that Pieology displayed the Ding Dongs on a circular place near the cash register. Chang lacks sufficient knowledge or information about MOD’s restaurants to admit or deny the allegations regarding MOD’s restaurants, and, on that basis, denies those allegations. Except as expressly admitted and alleged herein, Chang denies the allegations contained in the corresponding paragraph of the Complaint.

i. Chang admits that Pieology serves its pizzas on a round tray lined with paper with the customer's name written in black marker, and that a server shouts the customer's name when an order is ready. Chang lacks sufficient knowledge or information about MOD's restaurants to admit or deny the allegations regarding MOD's restaurants, and, on that basis, denies those allegations. Except as expressly admitted and alleged herein, Chang denies the allegations contained in the corresponding paragraph of the Complaint.

j. Chang lacks sufficient knowledge or information about the allegations in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

28. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

29. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

30. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

31. Chang admits that the Pieology website states that it is “fast expanding.” Chang admits that LBBP is pursuing opportunities for additional locations and potential franchise opportunities, and further admits that Franchise has entered into franchise agreements and development rights agreements on behalf of Defendants. Chang admits that Franchise was formed in 2012, and further admits that Franchise receives franchise fees and royalties from franchisees.

1 Except as expressly admitted and alleged herein, Chang denies the allegations contained in the
 2 corresponding paragraph of the Complaint.

3 **IV. CLAIMS AND CAUSES OF ACTION**

4 **Count 1: Trade Dress Infringement Under 15 U.S.C. § 1125(a)**

5 1. In response to the corresponding paragraph of the Complaint, Chang hereby repeats
 6 and incorporates herein by reference the responses to the preceding paragraphs, as though fully set
 7 forth herein.

8 2. Chang denies each and every allegation contained in the corresponding paragraph of
 9 the Complaint.

10 3. Chang denies each and every allegation contained in the corresponding paragraph of
 11 the Complaint.

12 4. Chang denies each and every allegation contained in the corresponding paragraph of
 13 the Complaint.

14 5. Chang denies each and every allegation contained in the corresponding paragraph of
 15 the Complaint.

16 6. Chang denies each and every allegation contained in the corresponding paragraph of
 17 the Complaint.

18 **Count 2: Misappropriation of Trade Secrets Under RCW 19.108 et seq.**

19 7. In response to the corresponding paragraph of the Complaint, Chang hereby repeats
 20 and incorporates herein by reference the responses to the preceding paragraphs, as though fully set
 21 forth herein.

22 8. Chang lacks sufficient knowledge or information regarding the allegations contained
 23 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such
 24 allegations.

25 9. Chang lacks sufficient knowledge or information regarding the allegations contained
 26 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such
 27 allegations.

10. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

11. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

12. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

13. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

Count 3: Tortious Interference with Contractual Relations

14. In response to the corresponding paragraph of the Complaint, Chang hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

15. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

16. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

17. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

Count 4: Breach of Contract

19. In response to the corresponding paragraph of the Complaint, Chang hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

1 20. Chang admits that, in connection with its investment in MOD, CMCB executed
 2 MOD's limited liability company agreement. Chang admits that that agreement, in all respects,
 3 speaks for itself. Chang denies the allegations contained in the corresponding paragraph of the
 4 Complaint that characterize the limited liability company agreement. Chang lacks sufficient
 5 knowledge or information regarding the remaining allegations contained in the corresponding
 6 paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

7 21. Chang denies each and every allegation contained in the corresponding paragraph of
 8 the Complaint.

9 22. Chang denies each and every allegation contained in the corresponding paragraph of
 10 the Complaint.

11 23. Chang denies each and every allegation contained in the corresponding paragraph of
 12 the Complaint.

13 24. Chang denies each and every allegation contained in the corresponding paragraph of
 14 the Complaint.

Count 5: Civil Conspiracy

15 25. In response to the corresponding paragraph of the Complaint, Chang hereby repeats
 16 and incorporates herein by reference the responses to the preceding paragraphs, as though fully set
 17 forth herein.

18 26. Chang denies each and every allegation contained in the corresponding paragraph of
 19 the Complaint.

20 27. Chang denies each and every allegation contained in the corresponding paragraph of
 21 the Complaint.

22 28. Chang denies each and every allegation contained in the corresponding paragraph of
 23 the Complaint.

Count 6: Permanent Injunctive Relief

29. In response to the corresponding paragraph of the Complaint, Chang hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

30. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

31. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from Chang. To the extent a response is required, Chang denies the allegations contained in the corresponding paragraph of the Complaint.

32. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from Chang. To the extent a response is required, Chang denies the allegations contained in the corresponding paragraph of the Complaint.

V. AFFIRMATIVE DEFENSES

In further answer to the Complaint, Chang asserts the following separate and affirmative defenses. Defendant deserves the right to raise additional affirmative defenses as they become known to it through discovery or investigation.

FIRST AFFIRMATIVE DEFENSE

1. Chang cannot be liable for the damages, if any, alleged in the Complaint and in each and every cause of action therein because each and every cause of action fails to state a claim and/or cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

2. Chang alleges that each of MOD's purported claims for relief against Chang is frivolous and unsupported.

THIRD AFFIRMATIVE DEFENSE

3. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

4. All of MOD's purported causes of action against Chang are barred by the applicable statutes of limitations.

FIFTH AFFIRMATIVE DEFENSE

5. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

6. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

7. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

8. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of acquiescence.

NINTH AFFIRMATIVE DEFENSE

9. MOD's alleged trade dress is not protectable trade dress, including, and without limitation, because the alleged trade dress is non-distinctive, lacks secondary meaning, lacks secondary meaning in the geographic area where the Pieology restaurants are located, and/or is both utilitarian and aesthetically functional.

TENTH AFFIRMATIVE DEFENSE

10. MOD's alleged trade secrets are not protectable trade secrets.

ELEVENTH AFFIRMATIVE DEFENSE

11. Each of MOD's purported causes of action against Chang fails because Chang has complied with all of his legal obligations with respect to MOD.

TWELFTH AFFIRMATIVE DEFENSE

12. MOD has not been damaged in the sums or manner alleged, or in any sum or manner, or at all.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Upon information and belief, Chang states that MOD failed to mitigate, reduce, or avoid its damages, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Any injury or damage suffered or sustained by MOD, either as alleged in the Complaint or at all, was directly and proximately caused and contributed to by persons and entities other than Chang.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Chang alleges that it cannot fully anticipate all affirmative defenses that may be applicable to this action based upon the conclusory allegations contained in the Complaint. Accordingly, Chang expressly reserves the right to assert further defenses if, and to the extent that such affirmative defenses become available.

VI. PRAYER FOR RELIEF

WHEREFORE, defendant Chang prays for judgment as follows:

A. That MOD take nothing by its Complaint and that judgment be entered in favor of LBBP;

B. That Chang be awarded its costs and attorneys' fees incurred herein; and

C. That the Court grant such other relief as it deems just and proper.

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CHANG'S ANSWER TO SECOND AMENDED
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VII. JURY DEMAND

Pursuant to Fed. R. Civ. P. 38 Chang demands a trial by jury on all issues so triable.

DATED: November 26, 2013

JEFFER MANGELS BUTLER & MITCHELL LLP
By: /s/ JESSICA BROMALL SPARKMAN
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CHANG'S ANSWER TO SECOND AMENDED
COMPLAINT - 16
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